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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,717	11/26/2003	John D. Colleran	4060	7338
7590	06/13/2006		EXAMINER	
Law Offices of Albert S. Michalik, PLLC Suite 193 704-228th Avenue NE Sammamish, WA 98074			AHLUWALIA, NAVNEET K	
			ART UNIT	PAPER NUMBER
			2166	

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/722,717	COLLERAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Navneet K. Ahluwalia	2166	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 November 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) 10 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 November 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

1. The application has been examined. Claims 1 – 21 are pending in this office action.

### ***Claim Objections***

2. Claim 10 is objected to because of the following informalities:

Claim 10 states a computer readable medium having computer executable instructions for performing the method of claim 1. It is unclear as to how the method instructions would be executable and if they would be executed in any order and also it is unclear as to how it would be tangible.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 10 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 10 is rejected because the language of claim 10 in view of the definition of the computer readable medium from the detailed description of the embodiments (Page 7 lines 22 – 24 and Page 8 lines 11 – 23) recites modulated data signal, carrier wave and signals which are not considered as tangible and do not form the basis of statutory subject matter under 35 U.S.C. 101.

4. To expedite a complete examination of the instant application the claims rejected under 35 U.S.C. 101 (non-statutory) above are further rejected as set forth below in

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anticipation of applicant amending these claims to place them within the four categories of invention.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 – 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Parthesarathy et al. ('Parthesarathy' herein after) (US 6,353,926 B1).

With respect to claim 1,

Parthesarathy discloses in a computing environment, a method comprising: providing a manifest, the manifest identifying a set of at least one tool that when executed collects data for analysis (column 6 lines 32 – 42, Parthesarathy); providing a control mechanism to interpret the manifest, the control mechanism automatically executing each tool identified in the set to collect the data from a machine (column 5 lines 61 – 67, Parthesarathy); and receiving the data collected from the machine (column 6 lines 48 – 58, Parthesarathy).

With respect to claim 2,

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Parthesarathy discloses the method of claim 1 wherein providing a manifest comprises providing a mechanism that when clicked on links to the manifest (column 7 lines 22 – 30, Parthesarathy).

With respect to claim 3,

Parthesarathy discloses the method of claim 2 wherein providing the mechanism comprises providing a URL that when clicked on links to the manifest (column 7 lines 34 – 47, Parthesarathy).

With respect to claim 4,

Parthesarathy discloses the method of claim 1 wherein providing a manifest comprises sending information about the manifest in an email message (column 10 lines 1 – 3, Parthesarathy).

With respect to claim 5,

Parthesarathy discloses the method of claim 1 wherein providing a manifest comprises sending information about the manifest in an instant message (column 9 lines 2 – 12, Parthesarathy).

With respect to claim 6,

Parthesarathy discloses the method of claim 1 wherein providing a manifest comprises providing a site that may be accessed via a browser (column 8 lines 66 – 67

and column 9 lines 1 – 5, Parthesarathy).

With respect to claim 7,

Parthesarathy discloses the method of claim 1 wherein for each tool, the control mechanism determines whether that tool needs to be downloaded and installed to the machine, and if so, the control mechanism further downloading and installing that tool (column 6 lines 48 – 58, Parthesarathy).

With respect to claim 8,

Parthesarathy discloses the method of claim 1, further comprising, running a reporting program to collect the data and package the data for transmission (column 6 lines 13 – 26, Parthesarathy).

With respect to claim 9,

Parthesarathy discloses the method of claim 1 wherein providing the control mechanism comprises transmitting the control mechanism to the machine (column 9 lines 25 – 33, Parthesarathy).

With respect to claim 10,

Parthesarathy discloses a computer-readable medium having computer-executable instructions for performing the method of claim 1 (column 6 lines 32 – 42, column 5 lines 61 – 67 and column 6 lines 48 – 58, Parthesarathy).

With respect to claim 11,

Parthesarathy discloses in a computing environment, a system comprising: a set of available tools, the tools configured to collect data from a machine (column 6 lines 32 – 42, Parthesarathy); a reporting mechanism that provides access to data collected from the machine (column 6 lines 48 – 58, Parthesarathy); and a control mechanism that is communicated to the machine, the control mechanism configured to execute a subset of the tools to collect data, and further configured to operate the reporting mechanism to allow analysis of the collected data (column 5 lines 61 – 67, Parthesarathy).

With respect to claim 12,

Parthesarathy discloses the system of claim 11 wherein the set of available tools is maintained in a program store associated with a software support entity (column 6 lines 32 – 37, Parthesarathy).

With respect to claim 13,

Parthesarathy discloses the system of claim 11 wherein the control mechanism executes the subset of tools by interpreting a manifest (column 6 lines 48 – 59, Parthesarathy).

With respect to claim 14,

Parthesarathy discloses the system of claim 13 wherein the manifest comprises a data file accessed via a URL (column 7 lines 22 – 30, Parthesarathy).

With respect to claim 15,

Parthesarathy discloses the system of claim 14 further comprising a mechanism that selects a manifest from among a set of manifests, the selection based on received user data.

With respect to claim 16,

Parthesarathy discloses the system of claim 14 wherein the control mechanism is communicated to the machine in response to accessing the URL (column 7 lines 34 – 47, Parthesarathy).

With respect to claim 17,

Parthesarathy discloses the system of claim 11 wherein the control mechanism downloads to the machine at least one of the tools in the subset (column 9 lines 25 – 33, Parthesarathy).

With respect to claim 18,

Parthesarathy discloses the system of claim 11 wherein the control mechanism installs at least one of the tools in the subset on the machine (column 48 – 58, Parthesarathy).

With respect to claim 19,

Parthesarathy discloses the system of claim 11 wherein the control mechanism compares a version of an existing tool on the machine with a version of a tool in the subset (Figure 3, Parthesarathy).

With respect to claim 20,

Parthesarathy discloses the system of claim 11 wherein the control mechanism operates in response to a received user request (column 6 lines 1 – 10, Parthesarathy).

With respect to claim 21,

Parthesarathy discloses the system of claim 20 wherein the control mechanism executes at least one of the tools in the subset that was already installed on the machine prior to receiving the user request (column 6 lines 48 – 58 and column 9 lines 25 – 33, Parthesarathy).

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navneet K. Ahluwalia whose telephone number is 571-272-5636. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alam T. Hosain can be reached on 571-272-3978. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Navneet*  
Navneet K. Ahluwalia  
Examiner  
Art Unit 2166

*Mohammad Ali*  
MOHAMMAD ALI  
PRIMARY EXAMINER

Dated: 06/07/2006